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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Brittany Allen,

10 Plaintiff,

11 v.

12 Express Facility Management,

13 Defendant.
14

No. CV-24-00676-PHX-DLR

ORDER

15
16 At issue are two motions filed by Plaintiff Brittany Allen, who is self-represented,
17 seeking the issuance of subpoenas to Defendant Express Facility Management (“Express”).
18 (Docs. 42, 44.)

19 Ms. Allen alleges that, while employed with Express, she experienced sex- and race-
20 based harassment and discrimination. (*See* Doc. 10.) Following a scheduling conference,
21 the Court issued a scheduling order that set a deadline of November 15, 2024, for the
22 completion of fact discovery. (*See* Doc. 14.) At Ms. Allen’s request, the Court later
23 extended the fact discovery deadline to December 15, 2024. (Doc. 32.)

24 On October 28, 2024, Ms. Allen issued to Express various interrogatories and
25 requests for production of documents. These requests included (1) Express’s surveillance
26 camera footage from July 1, 2021 to September 1, 2022, (2) the name/model of Express’s
27 surveillance cameras, (3) the name of the company who installed Express’s surveillance
28 cameras, (4) the name of the software used to collect footage from Express’s surveillance

1 cameras, (5) written statements from individuals identified as James and Jerica, and (6) a
 2 list of all Express's employees between June 2022 to October 2022. (Doc. 45-1.)

3 In response, Express (1) produced the only surveillance footage of Ms. Allen in its
 4 possession and explained that all other video during the period requested was deleted
 5 approximately 10 days after its recording per Express's regular retention policy (which
 6 Express detailed), (2) disclosed the name/model of its surveillance cameras, (3) explained
 7 that it installed its own cameras, (4) provided the name of the software used to collect
 8 footage from its surveillance cameras, (5) stated that there are no existing written
 9 statements by James and Jerica, and (6) provided a list of Express's directors and members
 10 of management employed from July 18, 2022 to August 18, 2022. (*Id.*)

11 On December 30 and December 31, 2024—roughly two weeks after the close of
 12 fact discovery—Ms. Allen filed the two motions at issue. These motions ask the Court to
 13 issue subpoenas to Express for the same information discussed above, which Ms. Allen
 14 already sought in her interrogatories and requests for production of documents.

15 Ms. Allen's motions are denied because they are procedurally improper. "Although
 16 most courts hold that a subpoena duces tecum may be served on another party, it cannot be
 17 used to circumvent Rule 34 or the other discovery rules." *McCall v. State Farm Mutual*
 18 *Auto. Ins. Co.*, 2:16-cv-01058-JAD-GWF, 2017 WL 3174914, at *6 (D. Nev. July 26,
 19 2017). This includes using a subpoena under Federal Rule of Civil Procedure 45 to
 20 circumvent meet and confer requirements. *See Marten v. Haire*, 329 F.R.D. 256, 260 (D.
 21 Mont. 2018). Such is the case here. The Court's scheduling order is clear:

22 When the parties have a dispute that could properly be
 23 addressed pursuant to Rule 26(c) or 37(a), they shall not file
 24 written motions. If a discovery dispute arises and cannot be
 25 resolved despite sincere efforts through personal consultation,
 26 the parties shall call the Court's Judicial Assistant, Michele
 27 Morgan, at (602) 322-7530, to set a telephonic conference and
 28 certify compliance with Rule 37(a)(1). If the parties believe it
 would assist the Court, the parties may file a joint statement of
 the dispute, not to exceed 3 pages, one and one-half page per
 side. The joint statement may be single-spaced. The purposes
 of the joint statement are to provide the Court with information
 about the dispute which may be difficult to succinctly describe
 to the Court over the phone, and to make a record of the
 discovery sought. If a party contends that the discovery of ESI

1 should be disallowed or limited due to undue burden or
 2 expense, it must file an affidavit of an expert describing the
 3 burden and estimating the expense that would be incurred. A
 4 discovery motion may be filed only after the parties have
 5 discussed the discovery dispute with the Court and the Court
 6 has authorized the filing of a discovery dispute motion.

7 (Doc. 14 at 3.) If Ms. Allen has a good-faith basis to believe that Express did not adequately
 8 respond to her interrogatories and requests for production of documents, she must follow
 9 this procedure to present the discovery dispute to the Court. She cannot evade the meet-
 10 and-confer requirements or the Court's limitations on written discovery motions by
 11 transplanting her interrogatories and requests for production of documents into a Rule 45
 12 subpoena.

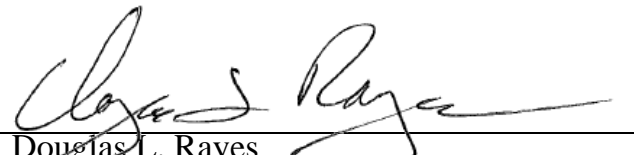
13 What's more, the Court's scheduling order explains:

14 Absent extraordinary circumstances, the court will not
 15 entertain fact discovery disputes after the deadline for
 16 completion of fact discovery and will not entertain expert
 17 discovery disputes after the deadline for completion of expert
 18 discovery. Delay in presenting discovery disputes for
 19 resolution is not a basis for extending discovery deadlines.

20 (*Id.*) Ms. Allen's motions were filed over two weeks after the close of fact discovery, and
 21 she has not identified extraordinary circumstances excusing her delay in following the
 22 Court's procedures for raising discovery disputes. For these reasons,

23 **IT IS ORDERED** that Ms. Allen's motions for the issuance of subpoenas (Docs.
 24 42, 44) are **DENIED**. Nothing in this order, however, prevents Ms. Allen from raising a
 25 discovery dispute with the Court pursuant to the procedures outlined in Paragraphs 6(a)
 26 and (c) of the Scheduling Order (Doc. 14) if she has a good-faith basis to believe that
 27 Express has not adequately responded to her written discovery requests.

28 Dated this 31st day of January, 2025.

29 
 30 Douglas L. Rayes
 31 Senior United States District Judge